No. 80937-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MUTUAL OF ENUMCLAW INSURANCE COMPANY,

Respondent,

v.

RED OAKS CONDOMINIUM OWNERS ASSOCIATION,
a Washington nonprofit corporation,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER RED OAKS CONDOMINIUM OWNERS ASSOCIATION

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Pursuant to RAP 13.7(d), Red Oaks Condominium Owners Association (Red Oaks) submits the following Supplemental Brief.

A. ASSIGNMENTS OF ERROR

Red Oaks incorporates Assignments of Error in Appellant's Brief and Issues for Review by the Supreme Court in its Petition for Review.

B. STATEMENT OF THE CASE

Red Oaks incorporates the Statement of the Case sections of Appellant's Brief and its Petition for Review. Additionally, on June 10, 2005, the trial court issued an order that Red Oaks' claims are not excluded by the "faulty workmanship" provision.[1]

C. ARGUMENT

The principal issues of this case have been obscured by discussions of general philosophical legal doctrines and arguments unrelated to the relevant subject matter. The first issue is a straight forward matter of contract interpretation. Insurance policies are interpreted by reading the plain language of the policy as understood by an average person.[2] If the plain language is clear and unambiguous, the court must enforce it as written.[3] These basic premises of contract interpretation have been lost in this case and ignored by the lower courts. If the lower courts had followed

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[1] CP 899.
[2] *Morgan v. Prudential Ins. Co. of Am.*, 86 Wn.2d 432, 434, 545 P.2d 1193 (1976); *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 733, 837 P.2d 1000 (1992).
[3] *Quadrant Corp. v. Am. States Ins. Co.*, 154 Wn.2d 165, 171, 110 P.3d 733 (2005).

these basic rules of interpretation, they would have found coverage for Red Oaks' claims under the Mutual of Enumclaw (MoE) umbrella policy.

The second issue is a simple matter of statutory interpretation and the application of law to undisputed facts. The Washington Administrative Code (WAC) sets forth required good faith conduct for insurers.[4] This Court has defined an enhanced duty of good faith in the context of a reservation of rights defense.[5] MoE did not comply with the WAC requirements or the enhanced duty of good faith under *Tank*.[6] If the lower courts had properly applied the WAC and *Tank*, they would have determined that MoE acted in bad faith and violated the Consumer Protection Act (CPA)[7], regardless of the ultimate coverage determination.

I. The Plain Language of the Policy Exclusions Does Not Apply to Red Oaks' Claims

MoE places tremendous weight on its argument that the merger doctrine establishes a general contractor's liability for damage caused by subcontractors' work. The merger doctrine is a legal philosophy that addresses the liability of general contractors, *not* insurance policy interpretation and coverage issues. This doctrine was established years after the policy language, so it could not have influenced the drafter's

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[4] WAC 284-30-330 *et seq.*
[5] *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 715 P.2d 1133 (1986).
[6] *Id.*
[7] RCW 19.86 *et seq.*

intent. There is no question that Sundquist is liable for damages caused by subcontractor work, the only question is whether the policy provided coverage for this liability. The plain language of the policy does not exclude coverage for subcontractor work.

MoE bears the burden of establishing that exclusions clearly and unambiguously bar coverage.[8] MoE has consistently relied on three policy exclusions to try to defeat coverage in this case: the "product" exclusion;[9] the "faulty workmanship" exclusion;[10] and the "your work" exclusion.[11] As MoE correctly asserts, exclusions operate independently and must be considered independently of all other exclusions.[12] Despite this assertion, MoE continues to treat all three exclusions in the same manner and incorrectly apply the legal arguments related to the "product" exclusion to the other exclusions of this umbrella policy.

Red Oaks did not address the substantive arguments related to the "faulty workmanship" exclusion in its briefing to the Court of Appeals because the issue was not properly before that court. The "faulty workmanship" exclusion applies to "[p]roperty damage...to...*that*

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[8] *Hayden v. Mutual of Enumclaw Ins. Co.*, 141 Wn.2d 55, 64, 1 P.3d 1167 (2000).
[9] The "product" exclusion contained in the underlying CGL policy is not at issue in this appeal. The trial court correctly ruled that the "product" exclusion does not apply to the umbrella policy and MoE does not challenge this ruling.
[10] CP 115. (also attached hereto as Exhibit A)
[11] Id.
[12] CP 1445. [Defendant MoE's Motion for Summary Judgment, pg. 7, citing *Harrison Plumbing & Heating v. N.H. Ins. Group*, 37 Wn. App. 621, 627, 681 P.2d 875 (1984).]

particular part of any property...the restoration, repair or replacement of which has been made or is necessary *by reason of faulty workmanship thereon* by or on behalf of the Insured" (emphasis added).[13] The plain language of this exclusion, as interpreted by the average person and by the trial court, could not apply to Red Oaks' claims for coverage.

The "your work" exclusion is discussed extensively in the underlying briefing to the Court of Appeals and the Petition for Review. In support of its arguments, MoE addresses the merger doctrine and other philosophical legal doctrines that do not apply to contract interpretation under Washington law. The Court of Appeals based its coverage analysis on these doctrines, ignoring the basic rules of policy interpretation set forth by this Court.

a. The "Faulty Workmanship" Exclusion Does Not Apply to Completed Operations.

The "faulty workmanship" exclusion is contained in the UMB 3011 endorsement which consists of two separate and distinct sections, A and B.[14] The "faulty workmanship" exclusion is found in Section A.[15] The exclusion related to "completed operations" is found in Section B.[16] The parties agree that Red Oaks' claims relate only to "completed

[13] CP 115. (also attached hereto as Exhibit A)
[14] Id.
[15] Id.
[16] Id.

operations".[17] Thus, Red Oaks' claims are not subject to the language of Section A, which includes the "faulty workmanship" exclusion.

The cases cited by MoE in support of its argument are distinguishable from this case. *Vandivort* and *William Crawford* both involve damages caused *during* the construction work.[18] The "faulty workmanship" exclusions in those cases specifically contain language related to "ongoing operations" and property damage arising out of those operations.[19] Both courts determined that the exclusions barred coverage because the plain meaning of the language clearly applied to the particular circumstances of those cases.[20] There is no specific "ongoing operations" language in this case, but there is specific language in Section B which addresses "completed operations". There are only two time periods for coverage under this policy: the period during construction ("ongoing operations") and the period after construction ("completed operations"). The layout of the UMB 3011 makes this distinction readily apparent.

Of the cases cited by MoE, only *Schwindt* involved completed operations. The policy language in *Schwindt* is similar to the MoE policy,

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[17] CP 1447. (Defendant MoE's Motion for Summary Judgment, Pg. 9)
[18] *Vandivort v. Seattle Tennis Club*, 11 Wn. App. 303, 522 P.2d 198 (1974); *William Crawford, Inc. v. Travelers Ins. Co.*, 838 F. Supp. 157 (S.D.N.Y. 1993)
[19] *Id.*
[20] *Vandivort*, 11 Wn. App. at 308 ("plain meaning of the language covers the situation here"); *William Crawford,* 838 F. Supp. at 159, ("language is not ambiguous and precludes (insured's) recovery")

but has a notable difference: the Lloyd's policy does not distinguish between ongoing and completed operations. Accordingly, the *Schwindt* court did not address the distinction between ongoing and completed operations. The opinion contains no mention of policy language in the Lloyd's endorsement that relates solely to completed operations. The MoE endorsement *does* have specific language that relates only to completed operations.[21]

The *Schwindt* court disregarded cases cited by the insured and concluded that those cases did not apply to the policy language at issue because those cases involved different policy language.[22] The same reasoning applies here. The Court must look only at the specific language of *this* policy.

The plain language of the UMB 3011 endorsement's "faulty workmanship" exclusion is not applicable to coverage for completed operations. Red Oaks' claims relate only to completed operations and are not barred by the "faulty workmanship" exclusion.

b. The "Faulty Workmanship" Exclusion Does Not Apply to Damage Arising Out of Work That Was Performed Consistent With Construction Industry Standards at the Time of Construction.

Even if the Court finds the "faulty workmanship" exclusion applies

[21] CP 115. (also attached hereto as Exhibit A)
[22] *Schwindt v. Underwriters at Lloyd's of London*, 81 Wn. App. 293, 304, 914 P.2d 119 (1996).

to completed operations in this case, it would still not apply to damage arising out of work that was performed according to acceptable construction standards at the time of construction. The plain language of the exclusion applies only to "faulty" workmanship. The parties agree that "faulty" workmanship means work that has faults or defects.[23]

Red Oaks' claims against the developer are based on the Washington Condominium Act (WCA)[24] which does not require a finding of negligence or faulty workmanship to establish liability for damage to condominiums. Some of the claims asserted in this case specifically involve damage caused by work that was performed in accordance with standard construction practices at the time of construction, including the building code applicable to the Red Oaks condominium.[25] For example, many of the building envelope components at Red Oaks were compliant with code requirements and industry standards at the time of construction, but were later determined not to prevent water entry into the structure.[26] Some of this work would violate current building codes because the code has since been revised, but that work was code compliant, and not "faulty", at the time of construction.

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[23] CP 1465. (Defendant MoE's Motion for Summary Judgment, pg. 9)
[24] RCW 64.34 et seq.
[25] CP 775-781. (Declaration of Ken Harer in Support of Memorandum in Opposition to Mutual of Enumclaw's Second Motion for Summary Judgment)
[26] Id.

MoE's interpretation of the "faulty workmanship" exclusion effectively negates the existence of the word "faulty" and applies the exclusion to all work that results in damage, even if the work met the construction industry standards, including the building code, at the time the work was performed. MoE suggests a new legal conclusion that if there is damage, then there must have been faulty workmanship and, therefore, no coverage. Accepting MoE's interpretation of the "faulty workmanship" exclusion imposes strict liability for any form of construction work, not just condominiums, and creates an automatic exclusion for all construction work, regardless of whether it actually was faulty. MoE offers no precedent to support this interpretation. A ruling accepting this interpretation would render these policies practically worthless to any contractor.

MoE bears the burden of proving the "faulty workmanship" exclusion applies to Red Oaks' claims. In order to establish there is no coverage as a matter of law, MoE would have to provide undisputed facts that every element of claimed damage resulted from faulty workmanship. MoE has not met its burden of proof in this regard.

MoE cites cases that do not involve WCA claims. All of the cited cases involve claims for damages caused by the insured's negligence or use of a defective product. In *Vandivort*, the damage was caused by the

insured's negligence.[27] In *William Crawford*, the damage was caused by the insured's use of a defective product.[28] In *Schwindt*, the damage was caused by the insured's use of defective products and negligent installation of those products.[29] The claims in those cases required a finding of negligence by the insured. There has been no such finding of fact in this case. The "faulty workmanship" exclusion can not apply to Red Oaks' claims absent a finding of fact that there was faulty workmanship and that every part of the claimed damage resulted from faulty workmanship.

c. The "Faulty Workmanship" Exclusion Does Not Apply to Damage to Work Other Than Work on "That Particular Part".

Even if the Court finds the "faulty workmanship" exclusion applies to completed operations, it does not apply to damage to work other than "*that particular part* of any property...the restoration, repair or replacement of which has been made or is necessary *by reason of faulty workmanship thereon* by or on behalf of the Insured" (emphasis added).[30]

The plain language of the "faulty workmanship" exclusion, as interpreted by an average person, relates only to "that particular part" requiring repair or replacement because of "faulty workmanship thereon".

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[27] 11 Wn. App. at 304 (landslide negligently caused by insured resulted in damage to building)
[28] 838 F. Supp. at 158 (a fan used by the insured burst into flames, causing damage to other portions of the building)
[29] 81 Wn. App. at 300.
[30] CP 115. (also attached hereto as Exhibit A)

The average person would not interpret this language to apply to damage to parts of a developer's construction project that were not faulty.

MoE cites cases for the proposition that, in the context of the work of a general contractor, "that particular part" means the entire building. As discussed above, the general contractors in *Vandivort* and *William Crawford* were in the process of ongoing operations when the damage occurred.[31] In those cases, it was difficult to distinguish between particular parts that were still being worked on and those that were complete.[32] This distinction is not necessary in the context of completed operations, so the analyses of those cases are not applicable to the circumstances of this case.

As discussed above, the exclusionary language in *Schwindt* is different from the language at issue here.[33] The Lloyd's "faulty workmanship" exclusion in *Schwindt* does not include the phrase "by or on behalf of".[34] The general contractor in *Schwindt* argued that the exclusion did not apply to subcontractor work, even if that work was faulty, because the exclusion was limited to the work of the Assured.[35] The *Schwindt* court used the merger doctrine to apply the exclusion to

[31] 11 Wn. App. 303 and 838 F. Supp. 157.
[32] Id.
[33] 81 Wn. App. 293
[34] Id at 295.
[35] Id at 305.

damage caused by subcontractor work. The same reasoning is not relevant here because the plain language of the MoE "faulty workmanship" exclusion contains the phrase "by or on behalf of" and clearly applies to the work of subcontractors. Red Oaks does not argue otherwise. Instead, Red Oaks asserts that the exclusion does not apply to those portions of the project where the work was not faulty. Red Oaks agrees that the "faulty workmanship" exclusion bars coverage for the repair and replacement of work that was improperly performed, but damage to other, properly constructed portions of the building is covered by the policy.

Any determination by this Court related to coverage under the "faulty workmanship" exclusion should not apply to Red Oaks' claims in this case because the issue was not properly raised on appeal. The trial court correctly ruled that Red Oaks' claims were not barred by the "faulty workmanship" exclusion.[36] MoE filed, but later withdrew, its notice of appeal on this issue. The trial court order denying MoE's Motion for Summary Judgment on this issue should be affirmed.

d. The "Your Work" Exclusion Does Not Apply

The Court of Appeals erred in determining the meaning of the "your work" exclusion and applying it to bar coverage for Red Oaks' claims. This issue has been comprehensively briefed by both parties, but

[36] The Court of Appeals did not address this issue.

the errors made by the Court of Appeals warrant additional comment.[37]

This Court has held that: 1) the entire policy must be construed together so as to give force and effect to each clause; and 2) a policy should be given a practical and reasonable interpretation rather than a strained or forced construction that renders the policy ineffective.[38]

In interpreting the plain meaning of the "your work" exclusion, the Court should have given full force and effect to the deletion of the language "on behalf of" in the umbrella policy and determined that there must be coverage for subcontractor work. The Court acknowledged that the endorsement expressly replaces the property damage exclusion in the umbrella policy and that the language "on behalf of" was deleted from the endorsement, but failed to assign any significance to this deletion by MoE, as it would be understood by the average policy holder.[39] Instead, the Court specifically disregarded the deletion as "superfluous", and concluded that the work of the subcontractors is excluded from coverage.[40] This interpretation renders the policy endorsement ineffective and useless as to coverage from the insured's perspective. Policy holders could not have understood this, or they would not have paid more to

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[37] It is also worth noting that this Court has accepted review of another case involving the "your work" exclusion. (No. 80590-3, *Mut. of Encumclaw Ins. Co. v. MacPherson*)
[38] *Morgan*, 86 Wn.2d at 434-435.
[39] See *Red Oaks v. MoE*, attached to Petition for Review, Appendix A, p. 6.
[40] Id at 13.

purchase the endorsement.

The Court of Appeals reasoned that a general contractor is responsible for subcontractor work and liability policies are not performance bonds. MoE, as the policy drafter, has exclusive control over the policy language and must be held accountable for the same. If MoE drafted the policy in a manner that effectively made it a performance bond, then it is a performance bond, regardless of the outcome of other cases addressing similar disputes or any philosophical legal doctrines indicating otherwise. Average policy holders understand this endorsement to cover damage caused by subcontractor work, so under Washington law, that is what it must do.

The cases cited by MoE are distinguishable from this case as described in detail above and in prior briefing. Those cases, and the Court of Appeals' opinion in this case, relied on extensive analyses of philosophical legal doctrines to interpret the policy language. The question for this Court is far simpler: what coverage would the average policy holder understand the policy language to provide?

Red Oaks presented evidence that Sundquist's insurance agent believed that the UMB 3011 endorsement provided coverage for subcontractor work and that the Insurance Services Office (ISO) published a memo indicating that the form language of the endorsement was

intended to provide coverage for subcontractor work. This evidence supports the proposition that an average person would read the language as providing coverage for subcontractor work. The Court of Appeals failed to consider this as evidence of how an average person would interpret the policy language. Instead, the Court disregarded this evidence because Red Oaks did not prove that MoE intended to provide coverage for subcontractor work.

For decades, insurers, including MoE, and insureds understood this endorsement to protect general contractors from damages caused by subcontractor work because that is what the plain language of the policy states. Now, MoE claims the language unambiguously bars coverage.[41]

MoE's own actions contradict this assertion. MoE continued to provide coverage under these policies for years after *Schwindt* was decided.[42] In this case, MoE sent Sundquist a reservation of rights letter stating it had not determined whether there was coverage under the policy.[43] The same letter contains no mention of the unambiguous exclusion of subcontractor work that MoE now claims.

The plain language of the policy does not bar coverage for Red Oaks' claims. Red Oaks respectfully requests that the Court find, as a

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[41] *See* Respondent's Answer to Petition for Review, p. 5.
[42] CP 193, 568, and 1174.
[43] CP 1126 and 1127.

matter of law, that Red Oaks' claims are not excluded by the "your work" or "faulty workmanship" exclusions of the umbrella policy.

II. Mutual of Enumclaw's Actions Constitute Bad Faith and Violate the Consumer Protection Act (CPA).

Application of the plain language of the WAC and this Court's further explanation of the enhanced good faith obligations in *Tank* establish that MoE acted in bad faith and violated the CPA. MoE admitted to all facts alleged by Red Oaks regarding its conduct toward its insured, but continues to argue that there is no bad faith because there is no coverage.[44] Red Oaks' bad faith claims are separate from its claims for coverage and are not dependent on the ultimate coverage determination. The question for this Court is whether the undisputed facts regarding MoE's behavior toward its insured, taken as a whole, constitute bad faith.

a. MoE Did Not Comply With WAC Requirements

The WAC requires an insurer to: "promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement"[45]; and provide a written denial of the claim, citing the provision under which coverage was denied[46]. The Court of Appeals stated that it is the insured's obligation to disclose the policy provisions it

[44] CP 1095-1114.
[45] WAC 284-30-330(13).
[46] WAC 284-30-380(1).

relies upon in denying a claim, then concluded that MoE met this obligation when it informed Sundquist of its reasons for its reservation of rights.[47] The Court of Appeals erroneously concluded that the reservation of rights letter was a denial of coverage. It is illogical to conclude that a letter pledging to investigate to determine coverage could be considered a denial of coverage. The letter explicitly states, more than once, that MoE had not yet made a determination regarding coverage.[48] The letter contains general references to UMB 3011 and lists examples of claims that may not be covered by the policy, but does *not* state that coverage was denied nor that subcontractor work was excluded.[49]

In addition, the reservation of rights letter was written *before* MoE's investigation of Red Oaks' claims. MoE continued to participate in and fund the cooperative investigation of Red Oaks' claims for months after the reservation of rights letter was written. It was not until three days before the scheduled mediation that MoE informed Sundquist that it would not provide settlement funds. At that point, liability for the developer had been clearly established. This was a denial of coverage, but MoE did not reduce this denial to writing, nor did it provide an explanation of the provisions under which it was refusing to settle the claim. These

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[47] See *Red Oaks v. MoE*, attached to Petition for Review, Appendix A, p. 14
[48] CP 1126 and 1127.
[49] CP 1124 – 1126.

obligations are specifically required by the WAC. MoE did not comply with these obligations. This Court must determine if a refusal to provide a written determination of coverage, in compliance with the WAC, after all investigation is complete, constitutes bad faith conduct.

b. MoE Did Not Comply With *Tank* Requirements

This Court set forth specific criteria to evaluate whether an insurer has acted in good faith in a reservation of rights context.[50] The insurer must perform a thorough investigation; retain competent defense counsel; fully inform the insured of "all developments relevant to his policy coverage and the progress of his lawsuit"; and refrain from any action that demonstrates a greater concern for the insurer's monetary interest than for the insured's financial risk.[51]

MoE stipulated to all facts regarding its conduct following the reservation of rights letter including that it: did not send a denial letter; did not update its reservation of rights letter once investigation had been completed; and did not advise Sundquist that an appellate court decision that could affect its coverage determination was pending.

The Court of Appeals mistakenly asserts that MoE communicated, through its reservation of rights letter, its belief that there was no coverage

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[50] *Tank*, 105 Wn.2d at 387
[51] *Id.*

under the policy.[52] If MoE believed from the beginning there was no coverage, MoE had an obligation to inform its insured of that determination. Instead, the letter explicitly stated that a coverage determination had not yet been made and MoE would continue its investigation to make a coverage determination.[53] The letter also stated that it was common for some of the claims against the insured to be covered by the policy.[54]

The Court of Appeals ignored the fact that MoE participated in and funded an ER 408 investigation that clearly established liability on the part of its insured, and then used the investigation results to deny coverage. The investigation revealed faulty work and resulting damage, establishing Sundquist's liability. MoE is now using that information to deny coverage under the "faulty workmanship" exclusion. MoE funded an ER 408 investigation to avoid litigation costs and its own separate investigation, and then used the results as the basis for denying coverage.

This Court has held that the duty to indemnify and the duty to defend are separate.[55] It follows that insurers must conduct independent investigations regarding coverage and may not use the work product of defense counsel to establish a denial of coverage. The use of that work

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[52] See *Red Oaks v. MoE*, attached to Petition for Review, Appendix A, p. 13-14.
[53] CP 1126 and 1127.
[54] CP 1126.
[55] *Hayden v. Mutual of Enumclaw Ins. Co.*, 141 Wn.2d 55, 64, 1 P.3d 1167 (2000).

product is bad faith conduct.[56]

The Court of Appeals decided that MoE had no obligation to advise Sundquist of a different trial court's coverage determination because that determination was not a "development".[57] The Court failed to take into account the fact that MoE appealed that decision on the same bases that it now asserts in this case,[58] and that Sundquist made decisions regarding the ER 408 process and its litigation position based on MoE's reservation of rights letter because it was the only written communication Sundquist received regarding the status of MoE's coverage determination. If MoE had already determined that a policy with an identical exclusion did not provide coverage for subcontractor work, it had an obligation to inform Sundquist of this "development". MoE demonstrated greater concern for its own interests by withholding this information.

c. MoE's Failure to Comply With the WAC Constitutes a Violation of the CPA

The undisputed facts have demonstrated MoE's actions violated the WAC. MoE's failure to comply with the WAC and the resulting damage to Sundquist entitles Red Oaks to recovery under the CPA.

When applied to the undisputed facts of this case, the plain

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[56] See *Ellwein v. Hartford Accident & Indem. Co.*, 142 Wn.2d 766, 781-782, 15 P.3d 640 (2001)[overruled on other grounds by *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478 (2003)].
[57] See *Red Oaks v. MoE*, attached to Petition for Review, Appendix A, p. 15.
[58] *Mutual of Enumclaw v. Archer Construction*, 123 Wn. App. 728, 97 P.3d 751 (2004).

language of the WAC and *Tank* establish that MoE breached its duty of good faith. The Court of Appeals' decision dismissing Red Oaks' bad faith and CPA claims should be reversed. The decision in this case will establish the standard for insurers' treatment of their insureds in the future.

D. ATTORNEY FEES

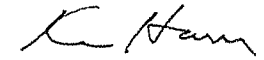
Red Oaks respectfully requests attorney fees on appeal under the attorney fees provision of the Consumer Protection Act, RCW 19.86.090; *Olympic Steamship v. Centennial*, 117 Wn.2d 37, 811 P.2d 673 (1991); and RAP 18.1.

E. CONCLUSION

Red Oaks respectfully requests the Supreme Court reverse the Court of Appeals' decision of July 30, 2007, reverse the dismissal of Red Oaks' claims, and find that Red Oaks' claims are not barred by the MoE policy; MoE's actions constituted bad faith; and MoE's actions violated the CPA.

Dated this 8 day of August, 2008.

Respectfully submitted,



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APPENDIX A

MUTUAL OF ENUMCLAW INSURANCE COMPANY Policy No: _____

Insured: _____ Effective Date: _____

BROAD FORM PROPERTY DAMAGE INCLUDING COMPLETED OPERATIONS

The exclusions of this policy relating to Property Damage are replaced by the following exclusion:

A. To Property Damage:

1. To property owned or occupied by or rented to the Insured or, except with respect to the use of elevators, to property held by the Insured for sale or entrusted to the Insured for storage or safekeeping.

2. Except with respect to liability under a written sidetrack agreement or the use of elevators to:

   (a) property while on premises owned by or rented to the Insured for the purpose of having operations performed on such property by or on behalf of the Insured,

   (b) tools, or equipment while being used by the Insured in performing his operations,

   (c) property in the custody of the Insured which is to be installed, erected or used in construction by the Insured,

   (d) that particular part of any property, not on premises owned by or rented to the Insured,

      (1) upon which operations are being performed by or on behalf of the Insured at the time of the Property Damage arising out of such operations, or

      (2) out of which any Property Damage arises, or

      (3) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the Insured;

B. With respect to the COMPLETED OPERATIONS HAZARD to Property Damage to work performed by the Named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

The insurance afforded by this endorsement shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the Insured, such as but not limited to Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage.